UNITED STATES PATENT AND TRADEMARK OFFICE

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09/717,184	11/20/2000	Trevor I. Blumenau	BLU-005	9528

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EXAMINER
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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	**Applicant(s)**
	09/717,184	BLUMENAU, TREVOR I.
Office Action Summary	**Examiner**	**Art Unit**	
	Philip B. Tran	2455	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>11 September 2008</u>.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-127</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) <u>1-34,77-94,121 and 124</u> is/are allowed.

6) ☒ Claim(s) <u>35-38,40-55,57-76,95-111, 113-120,122,123 and 125-127</u> is/are rejected.

7) ☒ Claim(s) <u>39,56 and 112</u> is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

Response to Request for Reconsideration

Notice to Applicant

1.   This communication is in response to request for reconsideration filed 25 August 2008. No claims has been amended or added. Therefore, claims 1-127 are pending for further examination.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 35-38, 40-55, 57-76, 95-111, 113-120, 122-123 and 125-127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al (Hereafter, Kenner), U.S. Pat. No. 5,956,716 in view of Guenthner et al (Hereafter, Guenthner), U. S. Pat. No. 6,134,588.

        Regarding claim 35, Kenner teaches apparatus for effecting the provision of content over a network, comprising:

        means for receiving a request for content from a client (i.e., requesting and retrieving video clips by the user at the user multimedia terminal) [see Abstract and Col. 4, Lines 43-64]; and

        means for determining the location of the client within the network, means for identifying the location of a plurality of node servers within the network that have at least part of the requested content stored thereon (i.e., attaching the Regional Identifier

(Regional ID) to the query and using the Regional ID to efficiently determine from among many remote Index Managers (IMs) 34, which remote IM 34 contains the requested video segments) [see Fig. 3 and Col. 16, Lines 14-38 and Col. 18, Lines 26-53], and

means for selecting from the plurality of node servers one or more candidate node servers that are determined to be topologically proximate to the client (i.e., determining the closest server containing the request video clips and geographical distribution) [see Fig. 4 and Abstract and Col. 5, Lines 39-64 and Col. 16, Lines 14-61 and Col. 23, Lines 3-65].

In addition, Kenner further teach enabling the client to request transmission of the requested content via the network from one or more of the candidate node servers (i.e., communicating between the web server and the user terminal for transmitting web page and video clips to the user terminal) [see Fig. 4 and Col. 22, Line 63 to Col. 23, Line 49].

Kenner does not explicitly teach means for communicating the identity of the candidate node servers to the client. However, Guenthner, in the same field of client-server communication for accessing the Web servers that host content requested by the Web browser endeavor, discloses using a list of IP addresses that are returned to the Web client upon an HTTP request wherein each of these IP addresses identifies a server that hosts the particular content that the user of the Web client has requested [see Guenthner, Fig. 3 and Col. 4, Lines 24-42]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching

of Guenthner into the teaching of Kenner in order enable the client efficiently to request
and obtain the specified content stored in a particular server by using the identity of the
particular server.

      Regarding claims 36-38, Kenner further teaches wherein the determination of
topological proximity to the client is performed using a breadth-first search to identify
node servers that satisfy a criterion regarding topological proximity to the client, and
further comprising means for storing a topological database including a topological map
of the network, wherein the means for selecting uses the topological map in making
determinations of topological proximity to the client, wherein the topological database
further includes data regarding bandwidth capacity and/or latency between at least
some of the network sites included in the topological map [see Fig. 4 and Col. 23, Lines
3-65].

      Regarding claims 40-42, Kenner further teaches means for identifying a network
site that will act as a node server for distribution of specified content, and means for
providing the specified content to the node server, means for identifying the location of a
prospective node server that desires to act as a node server for distribution of the
specified content, means for identifying the location of one or more other existing node
Servers that can act as a node server for distribution of the specified content, means for
determining the topological proximity of the prospective node server to the existing node
servers, wherein the prospective node server is selected as a node server for

distribution of the specified content if the prospective node server satisfies a criterion

regarding topological proximity to the existing node servers, wherein the means for

determining the topological proximity of the prospective node server to the existing node

servers is performed using an annealing method [see Fig. 4 and Col. 23, Lines 3-65].

Regarding claims 43-45, Kenner further teaches means for storing data

identifying available content that can be obtained by a client, and means for providing

an identification of available content to the client, and means for storing data identifying

content stored by the plurality of node servers, and wherein the content comprises

visual content including moving images [see Fig. 4 and Col. 4, Line 43 to Col. 6, Line

16].

Regarding claims 46-48, Kenner further teaches wherein the network is a

computer network, wherein the network is the Internet, and wherein the network is a

television network [see Fig. 4 and Col. 8, Lines 14-50].

Regarding claims 49-51, Kenner further teaches wherein the apparatus is a core

server, the system further comprising one of the plurality of node servers, the node

server comprising means for storing at least part of the requested content, means for

receiving a request to transmit content to the client, and means for transmitting the

requested content to the client and the client comprising means for transmitting a

request for content to the core server, means for receiving the identity of one or more

candidate node servers from the core server, means for selecting one or more of the

candidate node servers from which to obtain content, means for transmitting a request

to a selected node server to transmit content to the client, and means for receiving

content in response to the request transmitted to the node server [see Fig. 4 and

Abstract and Col. 5, Lines 17-64 and Col. 23, Lines 3-65].

       Regarding claim 52, Kenner teaches apparatus for effecting the provision of

content over a network, comprising:

       means for identifying which of a plurality of sets of content or parts of the plurality

of sets of content are stored by each of a plurality of node servers that are part of the

network, wherein at least one of the plurality of sets of content or parts of the plurality of

sets of content is stored on redundant node servers (i.e., attaching the Regional

Identifier (Regional ID) to the query and using the Regional ID to efficiently determine

from among many remote Index Managers (IMs) 34, which remote IM 34 contains the

requested video segments) [see Fig. 3 and Col. 16, Lines 14-38 and Col. 18, Lines 26-

53];

       means for receiving a request from a client that is part of the network for

transmission of a set of content to the client, wherein at least part of the requested set

of content is stored on redundant node servers (i.e., requesting and retrieving video

clips by the user at the user multimedia terminal) [see Abstract and Col. 4, Lines 43-64];

       means for selecting from the plurality of node servers one or more candidate

node servers that have stored thereon at least part of the requested set of content (i.e.,

determining the closest server containing the request video clips and geographical

distribution) [see Fig. 4 and Abstract and Col. 5, Lines 39-64 and Col. 16, Lines 14-61

and Col. 23, Lines 3-65].

In addition, Kenner further teach enabling the client to request transmission of

the requested content via the network from one or more of the candidate node servers

(i.e., communicating between the web server and the user terminal for transmitting web

page and video clips to the user terminal) [see Fig. 4 and Col. 22, Line 63 to Col. 23,

Line 49].

Kenner does not explicitly teach means for communicating the identity of the

candidate node servers to the client. However, Guenthner, in the same field of client-

server communication for accessing the Web servers that host content requested by the

Web browser endeavor, discloses using a list of IP addresses that are returned to the

Web client upon an HTTP request wherein each of these IP addresses identifies a

server that hosts the particular content that the user of the Web client has requested

[see Guenthner, Fig. 3 and Col. 4, Lines 24-42]. It would have been obvious to one of

ordinary skill in the art at the time of the invention was made to incorporate the teaching

of Guenthner into the teaching of Kenner in order enable the client efficiently to request

and obtain the specified content stored in a particular server by using the identity of the

particular server.

Regarding claims 53-55, Kenner further teaches wherein the candidate node

servers do not include all of the redundant node servers on which requested content is

stored, and further comprising means for storing data representing a topological map of

the network and means for determining the location of the client within the network, and

wherein the means for selecting one or more candidate node servers further comprises

means for selecting one or more candidate node servers that are determined to be

topologically proximate to the client, wherein the determination of topological proximity

to the client is performed using a breadth-first search to identify node servers that

satisfy a criterion regarding topological proximity to the client [see Fig. 4 and Abstract

and Col. 16, Lines 14-61 and Col. 23, Lines 3-65].

　　　　Regarding claims 57-59, Kenner further teaches means for identifying a network

site that will act as a node server for distribution of specified content, and means for

providing the specified content to the node server, means for identifying the location of a

prospective node server that desires to act as a node server for distribution of the

specified content, means for identifying the location of one or more other existing node

servers that can act as a node server for distribution of the specified content, means for

determining the topological proximity of the prospective node server to the existing node

servers, wherein the prospective node server is selected as a node server for

distribution of the specified content if the prospective node server satisfies a criterion

regarding topological proximity to the existing node servers, wherein the means

for determining the topological proximity of the prospective node server to the existing

node servers is performed using an annealing method [see Fig. 4, and Abstract and

Col. 16, Lines 14-61 and Col. 23, Lines 3-65].

Regarding claims 60-62, Kenner further teaches means for storing data

identifying available sets of content that can be obtained by a client, and means for

providing an identification of available sets of content to the client, means for storing

data identifying which of the plurality of sets of content or parts of the plurality of sets of

content are stored by each of a plurality of node servers, wherein the content comprises

visual content including moving images [see Fig. 4 and Col. 4, Line 43 to Col. 6, Line

16].

Regarding claims 63-65, Kenner further teaches wherein the network is a

computer network, wherein the network is the Internet, and wherein the network is a

television network [see Fig. 4 and Col. 8, Lines 14-50].

Regarding claims 66-68, Kenner further teaches the node server comprising

means for storing a set of content or part of a set of content, means for receiving a

request to transmit a set of content or part of a set of content to the client, and means

for transmitting the requested set of content or part of a set of content to the client and

the client comprising means for transmitting a request for a set of content to the core

server, means for receiving the identity of one or more candidate node servers from the

core server, means for selecting one or more of the candidate node servers from which

to obtain content, means for transmitting a request to a node server to transmit a set of

content or part of a set of content to the client, and means for receiving a set of content

or part of a set of content in response to the request transmitted to the node server [see

Fig. 4 and Abstract and Col. 5, Lines 17-64 and Col. 23, Lines 3-65].

Claim 69 is rejected under the same rationale set forth above to claim 52. In

addition, Kenner further teaches a television set top box [see Col. 8, Lines 14-25 and

Col. 21, Lines 19-35].

Regarding claim 70, Kenner further teaches apparatus as in claim 69, further

comprising means for ascertaining which node server television set-top boxes

transmitted content to the client television set-top box and which content each node

server television set-top box transmitted [see Col. 5, Lines 16-64 and Col. 8, Lines 14-

25 and Col. 21, Lines 19-35].

Claims 71-72 are rejected under the same rationale set forth above to claims 57-

59.

Regarding claim 73, Kenner further teaches the content comprises visual content

including moving images [see Col. 6, Lines 1-16].

Claims 74-76 are rejected under the same rationale set forth above to claims 66-

68.

Claim 95 is rejected under the same rationale set forth above to claim 35.

Claims 96-98 are rejected under the same rationale set forth above to claims 36-

38.

Claim 99 is rejected under the same rationale set forth above to claim 39.

Claims 100-102 are rejected under the same rationale set forth above to claims 40-42.

Claims 103-104 are rejected under the same rationale set forth above to claims 43-45.

Claims 105-107 are rejected under the same rationale set forth above to claims 49-51.

Claim 108 is rejected under the same rationale set forth above to claim 52.

Claims 109-111 are rejected under the same rationale set forth above to claims 53-55.

Claims 113-115 are rejected under the same rationale set forth above to claims 57-59.

Claims 116-117 are rejected under the same rationale set forth above to claims 60-62.

Claims 118-120 are rejected under the same rationale set forth above to claims 66-68.

Claim 122 is rejected under the same rationale set forth above to claim 35.

Claim 123 is rejected under the same rationale set forth above to claim 52.

Claim 125 is rejected under the same rationale set forth above to claim 35.

Claim 126 is rejected under the same rationale set forth above to claim 52.

Claim 127 is rejected under the same rationale set forth above to claim 69.

Allowable Subject Matter

4. Claims 1-34, 77-94, 121 and 124 are allowed.

5. Claims 39, 56 and 112 are objected to as being dependent upon a rejected base

claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

Response to Arguments

6. Claims 1-34, 77-94, 121 and 124 are allowed over prior art of record and claims

39, 56 and 112 are objected to as being dependent upon a rejected base claim, but

would be allowable if rewritten in independent form including all of the limitations of the

base claim and any intervening claims. Therefore, applicant's arguments are moot

(especially for claims 1, 121, 124 and dependent claims of claim 1).

7. Further, applicant's arguments have been fully considered but they are not

persuasive because of the following reasons:

Applicant argues that Kenner does not teach a client requests transmission of

content from a node server [see pages 6-8 of Remarks].

The examiner respectfully disagrees. Based on the reasonable broadest

interpretation, the node server is just a server that distributes content to the clients.

Therefore, Kenner does teach enabling the client to request transmission of the

requested content via the network from one or more of the candidate node server. That

is, communicating between the web server and the user terminal for transmitting web

page and video clips to the user terminal [see Kenner, Fig. 4 and Col. 22, Line 63 to

Col. 23, Line 49]. The claim limitation does not explicitly distinguish the functionality of node server and core server and does not explicitly require indirect or direct distribution of content to clients.

On the other hand, Guenthner, in the same field of client-server communication for accessing the Web servers that host content requested by the Web browser endeavor, discloses using a list of IP addresses that are returned to the Web client upon an HTTP request wherein each of these IP addresses identifies a server that hosts the particular content that the user of the Web client has requested [see Guenthner, Fig. 3 and Col. 4, Lines 24-42]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching of Guenthner into the teaching of Kenner in order enable the client efficiently to request and obtain the specified content stored in a particular server by using the identity of the particular server.

In view of the foregoing, the examiner asserts that the combination of cited references (combination of Kenner et al, U.S. Pat. No. 5,956,716 and Guenthner et al, U. S. Pat. No. 6,134,588) still teaches or suggests the subject matter recited in independent claims 35, 52, 69, 95, 108, 122, 123, 125-127. Accordingly, the examiner respectfully maintains the rejections for claims 35-76, 95-111, 113-120, 122-123 and 125-127 as shown above.

Conclusion

8.   THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CAR 1.136(a).

A SHORTENED STATUTORY PERIOD FOR REPLY TO THIS FINAL ACTION IS
SET TO EXPIRE THREE MONTHS FROM THE MAILING DATE OF THIS ACTION.
IN THE EVENT A FIRST REPLY IS FILED WITHIN TWO MONTHS OF THE
MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT
MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED
STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL
EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY
EXTENSION FEE PURSUANT TO 37 CAR 1.136(A) WILL BE CALCULATED
FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT,
HOWEVER, WILL THE STATUTORY PERIOD FOR REPLY EXPIRE LATER THAN
SIX MONTHS FROM THE MAILING DATE OF THIS FINAL ACTION.

9.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Philip Tran whose telephone number is (571) 272-3991.

The Group fax phone number is (571) 273-8300. If attempts to reach the examiner by

telephone are unsuccessful, the examiner's supervisor, Saleh Najjar, can be reached on

(571) 272-4006.

10.   Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free).

/Philip B Tran/
Primary Examiner, Art Unit 2455
Feb 1, 2009